

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR



Office of the General Counsel to the Mayor

June 17, 2009

Dear [REDACTED]

[REDACTED]

This letter responds to your appeal (the "Appeal") to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code, 2001 Ed. §§ 2-351 *et seq.* ("DC-FOIA"), dated April 13, 2009. Our office forwarded your Appeal to the District of Columbia Office of the Chief Financial Officer ("OCFO") with a request for a response. OCFO responded to the Appeal on May 5, 2009. The foregoing represents the appellate record, upon which this decision is based.

Background

On March 25, 2009, you sent a FOIA request to the OCFO requesting to see a retirement check that was allegedly issued to you in February of 1996. OCFO responded that it was not in possession of the check you requested. In your Appeal, you reiterated your request for a copy of the check. We interpret your Appeal to mean that you do not believe that OCFO conducted an adequate search for your check. OCFO responded to your Appeal stating again that it did not have a copy of the check you requested and further, that it is the agency's standard practice not to maintain copies of checks that were issued more than seven years ago. The check you requested was issued over thirteen years ago.

Discussion

It is the public policy of the District of Columbia that "all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees." D.C. Official Code 2001 Ed. §2-531. In furtherance of this policy, when searching for documents pursuant to a FOIA request, a public body should make "reasonable" efforts to search for the requested records. *Id.* §2-532(a-2). However, a search is not presumed unreasonable simply because it fails to produce all relevant material. See *Doe v. D.C. Metro Dep't*, 948 A.2d 1210, 1221 (D.C. 2008) (citing *Oglesby v. United States Dep't of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990)). An agency is also not required to produce records that they do not maintain in the ordinary course. Further, agencies

are not obligated to create or search for documents not within their possession or control. *Kissinger v. Reporters Committee for Freedom of the Press*, 445 U.S. 136 (1980).

Upon review of the record, I have determined that OCFO conducted an adequate search for the check you requested. It is clear that OCFO does not maintain checks issued after a certain time period and the check you requested falls beyond that time period. Therefore OCFO's inability to produce the requested check in this case is not indicative of the fact that the search was inadequate. *See Doe v. D.C. Metro Dep't*, 948 A.2d 1210, 1221 (D.C. 2008). For these reasons, OCFO's decision is UPHeld and your Appeal is DISMISSED.

If you are dissatisfied with this decision, you are free under the DC FOIA to commence a civil action against the District of Columbia government at any time in the District of Columbia Superior Court.

Sincerely,

A handwritten signature in black ink, appearing to read "Runako Allsopp".

Runako Allsopp
Deputy General Counsel
Executive Office of the Mayor

cc: Mr. Charles Barbera
Deputy General Counsel
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